

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Harold Rodriguez	Team: Squad #1	CCRB Case #: 201905021	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 06/10/2019 1:30 AM	Location of Incident: Inside § 87(2)(b) in the Bronx.		Precinct: 46	18 Mo. SOL 12/10/2020	EO SOL 7/27/2021
Date/Time CV Reported Tue, 06/11/2019 10:43 AM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Tue, 06/11/2019 10:43 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Edwin Martinez	08544	966192	046 PCT
2. POM Jason Santana	15369	951202	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Edward Arias	05050	941358	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Edwin Martinez	Abuse: Police Officer Edwin Martinez damaged § 87(2)(b)'s property.	
B.POM Jason Santana	Abuse: Police Officer Jason Santana entered § 87(2)(b) in the Bronx.	
C.POM Edwin Martinez	Abuse: Police Officer Edwin Martinez entered § 87(2)(b) in the Bronx.	
D.POM Jason Santana	Force: Police Officer Jason Santana pointed his gun at § 87(2)(b).	
E.POM Edwin Martinez	Force: Police Officer Edwin Martinez pointed his gun at § 87(2)(b).	

## Case Summary

§ 87(2)(b) filed the following complaint in Spanish with the CCRB on June 11, 2019 as a walk-in.

On June 10, 2019, at approximately 1:30 a.m., PO Jason Santana and PO Edwin Martinez of the 46<sup>th</sup> Precinct went to § 87(2)(b) in the Bronx for a wellness check of an elderly woman, § 87(2)(b). Since there was no response from within the apartment, PO Santana and PO Martinez approached the apartment via the fire escape. PO Martinez broke the latch on a window on the fire escape to § 87(2)(b), § 87(2)(b)'s apartment (**Allegations A-Abuse of Authority:** § 87(2)(g) and he and PO Santana entered § 87(2)(b) (**Allegations B and C-Abuse of Authority:** § 87(2)(g) § 87(2)(b) exited his bedroom and PO Santana and PO Martinez pointed their guns at him (**Allegations D and E-Force:** § 87(2)(g) Once they discovered they were in the wrong apartment, the officers apologized and left the apartment.

There are four BWC videos available from PO Santana and PO Martinez capturing this incident (Board Review 01-04).

## Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Edwin Martinez damaged § 87(2)(b)'s property.**

**Allegation (B) Abuse of Authority: Police Officer Jason Santana entered § 87(2)(b) in the Bronx.**

**Allegation (C) Abuse of Authority: Police Officer Edwin Martinez entered § 87(2)(b) in the Bronx.**

It is undisputed that PO Martinez and PO Santana entered § 87(2)(b)'s apartment, § 87(2)(b) in their attempt to enter § 87(2)(b) for a wellness check of § 87(2)(b). It is disputed whether the lock to § 87(2)(b)'s window was damaged in the process.

§ 87(2)(b) heard noise inside of his apartment while he slept. § 87(2)(b) came out of his bedroom and saw PO Santana and PO Martinez standing in his living room with their guns pointed at him. Both officers said, "Sorry!" and left the apartment through the front door without explaining further. § 87(2)(b) discovered that the latch on his living room window was broken but did not see officers break it (Board Review 05).

The building's superintendent, § 87(2)(b) spoke with the CCRB's Field Team and the undersigned investigator via telephone. He did not witness the incident but stated that he called 911 to report that the tenant in § 87(2)(b) had been missing for four days and he believed she had passed away in the apartment. He was informed at a later time by an unknown person that police officers had entered § 87(2)(b)'s apartment by mistake and § 87(2)(b) reported that his window was broken. § 87(2)(b) had the window repaired (Board Review 06).

§ 87(2)(b) brother, § 87(2)(b) provided a statement to the CCRB (Board Review 15) and stated that he called 911 several times. He reported that he had not heard from his sister in a few days, which was unlike her, and she had health problems. He stated that he and a neighbor, knocked on § 87(2)(b) door and called her phone but got no response though they could hear the phone ringing through the door. The police officers spoke with the super and told him that they might have to break the door down. The officers then spoke amongst themselves and § 87(2)(b) heard

mention of a fire escape but no context. He left the building to check on his car, which was double-parked, so he did not see if the officers attempted to enter through the fire escape. At some point the officers left the 7<sup>th</sup> Floor but he did not see what they did. Thirty minutes later, officers with heavy equipment arrived and attempted to break open § 87(2)(b) door. § 87(2)(b) left the building to look for parking and did not witness the entry.

EVENT § 87(2)(b) and 911 calls (Board Review 12, 13, 14) showed that a male named § 87(2)(b) called 911 to report that his sister § 87(2)(b) had not responded to his phone calls. Other tenants in the building attempted to contact § 87(2)(b) by knocking on the door and got no response. Neighbors reported that § 87(2)(b) cellphone and landline could be heard ringing through the door. § 87(2)(b) brother requested NYPD do a wellness check on § 87(2)(b).

PO Santana and PO Martinez's statements were generally consistent with each other. PO Santana and PO Martinez responded to a radio run to conduct a wellness check on a missing woman § 87(2)(b). The wellness check was requested by a family member of the missing woman. The officers spoke with § 87(2)(b) brother and an unidentified neighbor upon arriving and they both stated that § 87(2)(b) was unresponsive to calls. PO Santana specifically noted that he learned from § 87(2)(b) that § 87(2)(b) had cancer. Both officers knocked on the door and did not get a response. They called the landlord of the building but he did not have a spare key to the apartment. PO Santana then called Sgt. Arias on his cell phone and got permission to enter via the fire escape. PO Santana and PO Martinez accessed the fire escape, via the roof, in an attempt to gain access to § 87(2)(b) apartment to check on her. While the officers were on the fire escape, PO Santana stated that an unidentified female neighbor, who was standing outside on the sidewalk, pointed out § 87(2)(b) window. The officers gained entry through the fire escape window but neither recalled if they broke the window latch. Upon entering, PO Martinez opened the front door, looked outside and realized they were in the wrong apartment. They apologized to § 87(2)(b) explained the error and exited the apartment, realizing they were on the wrong side of the building (Board Review 07, 08). Sgt. Arias did not recall the incident (Board Review 16).

PO Santana and PO Martinez's BWC videos depicted their entry into § 87(2)(b)'s apartment, as well as their subsequent approach to the correct window belonging to § 87(2)(b) (Board Review 01-04). In PO Santana and PO Martinez's BWC videos (Board Review 03, 04) both officers approached § 87(2)(b)'s window. The videos began when PO Santana and PO Martinez were outside § 87(2)(b)'s window on the fire escape. The videos did not capture how officers arrived at or opened the window. PO Martinez was the officer closest to the window and entered the apartment first. PO Martinez opened the front door of the apartment, looked at the apartment number on the door and then stated out loud that they had accidentally entered the wrong apartment. PO Santana explained to § 87(2)(b) that they were in the wrong apartment and apologized.

In subsequent BWC videos (Board Review 01, 02), after they left § 87(2)(b)'s apartment, PO Santana and PO Martinez knocked on the doors of § 87(2)(b) which were next to each other and accessed the § 87(2)(b) via the fire escape from § 87(2)(b). At the 1:40 mark of PO Santana's BWC video (Board Review 01), a female yelled from the sidewalk, "That's her apartment right there." PO Santana asked, "This one, right?" and pointed to the window. The unidentified woman replied, "yes." The window was locked and PO Santana called his supervisor, via cellphone and did not breach the window.

Police officers may execute a warrantless entry into a civilian's home under the emergency doctrine exception if they 1) have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life; 2) are not primarily motivated by intent to arrest or seize evidence, and 3) have a reasonable basis, approximating probable cause, to associate the emergency with the place to be searched, People v. Rodriguez, 77A.D.3d 280, 907 N.Y.S.2d 294 (App. Div. 2010) (Board Review 09).

§ 87(2)(g)

§ 87(2)(g), § 87(2)(b)

§ 87(2)(g)

**Allegation (D) Force: Police Officer Jason Santana pointed his gun at § 87(2)(b)**

**Allegation (E) Force: Police Officer Edwin Martinez pointed his gun at § 87(2)(b)**

As previously noted, § 87(2)(b) alleged that PO Santana and PO Martinez pointed their guns at him when he exited his bedroom.

PO Martinez and PO Santana stated that they entered the apartment while identifying themselves as police officers. Though the apartment was dark, they saw a chair propped up against the doorknob of the front door of the apartment, and drew their weapons in case the woman was in danger or perhaps had been taken hostage. The fact that the chair barricaded the door heightened the officers' senses and made them more defensive. PO Martinez stated that when § 87(2)(b) came out of his bedroom, both officers pointed their guns at him. While PO Santana acknowledged drawing his

gun, he did not recall if he or PO Martinez pointed their guns at § 87(2)(b). Both officers spoke to § 87(2)(b) in Spanish. When PO Santana realized that § 87(2)(b) lived in the apartment, he holstered his weapon.

At the 30 second mark of PO Santana’s video, (Board Review 03), PO Santana immediately stated, “Why is the door like that? Look at the door.” A chair is visible propped up against the front door handle. In PO Martinez’s BWC (Board Review 04) at 00:43, he draws his gun and verbally identifies himself as a police officer. He points his gun and flashlight together in front of him as he makes his way to the front of the apartment. Inaudible speaking was heard from an unknown room. From 1:10 – 1:23, PO Martinez has his gun and flashlight pointed toward the doorway from where § 87(2)(b) s voice emanates. § 87(2)(b) enters the doorway and puts his hands up as instructed. Within two seconds, PO Martinez drops his gun down out of sight. Neither BWC video shows PO Santana’s gun drawn, though PO Martinez does not face PO Santana at any critical moment.

As PO Martinez corroborated § 87(2)(b)'s statement that both officers pointed their guns at him and BWC showed PO Santana with his gun pointed out in front of him just prior to the interaction with § 87(2)(b), the investigation determined by a preponderance of the evidence that PO Santana, as well as PO Martinez, pointed their guns at § 87(2)(b).

Patrol Guide Procedure 221-01 states that the decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present. When a uniformed member of service determined that the potential for serious physical injury is no longer present, the uniformed member of service will holster the firearm as soon as practicable (Board Review 11).

§ 87(2)(g)

## Civilian and Officer CCRB Histories

- This is the first CCRB complaint for which § 87(2)(b) has been a party (Board Review 10).
- PO Edwin Martinez has been a member of service for one year and this is the first CCRB complaint to which he has been a subject.
- PO Jason Santana has been a member of service for eight years and has been a subject in one CCRB complaint and three allegations, none of which were substantiated § 87(2)(b).

## Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.

- As of July 26, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 11).

§ 87(2)(b)

§ 87(2)(c), § 87(2)(b)

Squad No.: 1

Investigator: SI Harold Rodriguez      \_\_\_\_\_      \_\_\_\_\_  
Signature      Print Title & Name      Date

Squad Leader: Mgr. Joy Almeyda      \_\_\_\_\_      8.6.20  
Signature      Print Title & Name      Date

Reviewer: \_\_\_\_\_      \_\_\_\_\_      \_\_\_\_\_  
Signature      Print Title & Name      Date